Summary of OQ Public Meeting
Mesa, AZ
March 25, 2003

Opening Remarks

Richard Sanders opened by saying that the OQ team is still working on reconciling the extensive comments supplied by industry in their March 10 submittal. He noted that a "reset meeting" among regulators might be needed in late June to ensure that the intent of this working group is achieved and that the final protocols reflect the experience gained during the first eleven inspections.

Mr. Sanders explained that today's meeting would consist of:

- Presentations from two industry speakers, one contractor (Brad Heck) and one union representative (Jeffrey Owens);
- Deb Haifleigh would provide remarks from an industry perspective;
- Bernie Selig would present a summary of his industry (GTI) – sponsored work on a cross-comparison of evaluation practices in various industries;
- Mike Comstock would provide an update of the impact on small operators;
- Further discussion of outstanding issues and the protocols; and
- Open discussion.

Mr. Sanders also noted a need for planning and preparation of supplementary guidance, and reinforced the need for a national consensus standard.

The next – and potentially the last – of the public meetings on OQ is scheduled for the week of April 21st in Atlanta, GA (further details forthcoming on the exact date). The goal is to have inspection protocols and supplementary guidance in place before inspections begin in June/July.

Mr. Sanders also noted the industry's concern that the supplemental guidance has "crept" into the protocols. He clarified that the supplemental guidance is based on the initial flow chart, and refers back to the 9 elements in the initial flow chart. He noted that there are seventeen protocols each accompanied by supplementary guidance.

Kent Denny, Duke Energy, focused on the structure of the supplemental inspection protocols, and specifically on some of the characteristics of those protocols that implied the need for continuing progress. Industry, in its March 10 submission, has offered thoughts on the reorganization of those inspection protocols in a manner that might make them easier to understand.

Industry representatives noted that while there is some overlap between OPS and industry views of the protocols, some differences still remain. Mr. Sanders explained, in response, that OPS has chosen not to significantly restructure the protocols, although they will likely incorporate many of the industry's suggestions.

Specific Protocol Questions

Mr. Sanders discussed, and those present appeared to agree, that three types of protocol-related concerns remain:

- Whether protocols are within the scope of the rule,
- Whether wording changes to the protocol are necessary or appropriate,
- Whether issues underlying any of the protocols require further discussion.

The first issue is clearly the most contentious, and while it will be addressed in today's meeting, full resolution of this issue will likely require additional discussion. All three issues will be addressed in today's meeting.

One possible resolution to the concern about whether the protocols are outside of the scope of the rule would be to include a separate "statement" as a cover sheet to the protocols. Richard Sanders presented a draft version of such a statement. The draft, included in remarks by Mr. Sanders, differentiated between "enforceable" statements in the protocols and areas in which further investigation will lead to a better understanding of the operator programs used to comply with provisions of the rules.

Lastly, it was noted that the long-term success of the OQ program would require long-term monitoring of performance trends. Such performance trending would likely be conducted by industry and monitored by regulators.

Role of the Protocols

As noted in the draft statement on the role of protocols presented by Mr. Sanders, the role of the protocols is to support inspections conducted under the OQ program. The protocols have been compiled into protocol questions, most coupled directly with the prescriptive guidance of the rule. Operators need to be prepared to demonstrate how their programs will achieve compliance with the rule. The proposed Notice of Areas of Recommended Improvement (NARI) was discussed as a regulatory approach to assist operators by identifying areas of regulatory concern, but doing so using a compliance rather than an enforcement tool.

Concern Regarding Definitions of Various OQ Terms

Item 4 of today's agenda will address concern over various definitions. Industry, in their March 10 submission, provided feedback regarding many of the definitions. The definitions under review today include: benchmark, emergency response, evaluator, excavation and damage prevention, knowledge, skills and ability (KSAs), and the distinction between maintenance and new construction.

Industry Questions about the Timing of the OPS Response to Industry's March 10 Submission

Industry representatives expressed interest in the timing of feedback from OPS regarding industry's March 10 submission. Mr. Sanders indicated that OPS is currently reviewing industry's comments and anticipates reporting back to this group on those comments in the next few weeks.

Industry representatives questioned whether they would have an opportunity to provide more input and discussion on such changes, or whether OPS would simply resolve the comments themselves. Mr. Sanders responded that some discussion would be delayed until the development of a consensus standard, but that OPS would need to "finalize" (subject to a possible reset meeting, see above) the protocols prior to the beginning of OQ inspections in June/July. Ways to provide industry opportunities for continued comment were discussed.

Paul Wood indicated that significant work on revision of the protocols to address industry comments has already been completed, and that the revised protocols will be available well in advance of the upcoming Atlanta meeting.

Presentation: Brad Heck, Director of Corporate Compliance, Miller Pipeline Corp.

Mr. Heck represents contractor concerns. Mr. Heck clarified that, in preparing this presentation, he canvassed/interviewed many different contractors across the U.S.

He believes that it is the "same old story": since DOT has no enforcement authority over contractors, then contractors only have an indirect role via the operators regulated by OPS. In fact, Mr. Heck noted that original negotiated rulemaking ("reg-neg") process did not include contractors. Mr. Heck believes that contractors, in fact, are only represented at today's meeting due to Stacey Gerard's (Associate Administrator for Pipeline Safety, OPS), direct statement that contractors are to be engaged in this process.

The problem, as Mr. Heck sees it, is that most operators don't know or understand what it takes to supply the level of service that the operators expect, given the commensurate cost that the operators are willing to bear. Most operators, he noted, are unwilling to accept additional cost.

Mr. Heck's proposed solution: have one common standard to comply with (e.g., a consensus standard).

Mr. Heck noted that such a common standard worked well with regard to the DOT drug rule:

- everyone has the same compliance requirements
- universal authority
- the criteria/program participation is portable
- even "playing field" for competitors
- the audit process has prescriptive expectations/criteria

- program evaluation is simpler

He notes, however, that the OQ program – at least in its current form – includes some wide variances:

- Distinction between operation & maintenance and new construction
- Issue raised: the contractor typically "over-qualifies" employees, yet it is unclear when the contractor must utilize union-hall representation (this represents an increased cost to the contractor).
- This rule should not, in Mr. Heck's opinion, include persons performing functions off the pipeline system (e.g., in the "shop")
- Inclusion of additional covered tasks
- Portability crucial for contractors, and a universal approach would provide this
- Concern about the variance in re-evaluation intervals among operators, even if justified; this would force contractors to operate on multiple qualification systems
- Mr. Heck notes the need for extensive OTJ ("on the job") training, and even specialized training, but noted that industry standardization would provide better trained employees at a lower cost. Mr. Heck does not believe that classroom training provides sufficient benefit to warrant the cost (lost time worked) to contractors.
- With respect to direct observation of non-qualified individuals, Mr. Heck contends that contractors be allowed to use such criteria until the employee can address his/her qualifications via OTJ; Contends that an industry standard is needed
- Suggests, as well, standardizing the varying KSAs/Acceptable Evaluation Methods among operators
- Mr. Heck also noted the large variations in approach to - and amount of - operator documentation of covered tasks

Mr. Heck also posed challenges to various stakeholder groups. To contractors, he advocated that they:

- "Do the right thing"
- Communicate better with the operators
- Keep better informed/involved in the OQ process
- Have a plan/compliance process

To operators, Mr. Heck suggested:

- Acknowledgment of the issues contractors have to address
- Establishment of all OQ requirements in a manner that achieves cost containment
- Working together to reduce the time necessary for compliance
- Providing for equity in experience

In summary, Mr. Heck proposed:

- A single/universal “covered” task list;
- Consistency between/among operators;
- A willingness on the part of operators to accept multiple methods of qualifying and record/document keeping;
- A better level of coordination between operators and contractors;
- Support of the unions, particularly in terms of providing “qualified” personnel; and
- A merging of the current consortiums into a single entity

The point was reiterated that operators and contractors need to do a better job of working together. He noted, in particular, that compliance inconsistencies between operators translates to higher contract cost, which results in a higher cost to the operator, which in return results in decreased compensation.

Presentation: Jeffrey Owen, Labor Perspective

Mr. Owen provided the perspective of workers that perform maintenance task for pipeline operators. To this end, Mr. Owen addressed three issues: KSAs, treatment of emergency response, and treatment of training.

KSAs: Mr. Owen discussed the varying levels of knowledge and skill among the workers, and noted that this inconsistency in qualifications among contractors is of concern. He suggested training should become an automatic requirement under the OQ rule, so that KSAs would be more consistent among workers; however, he also cautioned against “painting everyone with the same brush.”

Mr. Owen expressed concern as well as to whether those workers entering the workforce today are sufficiently qualified and whether on-the-job training (OJT) should be an acceptable method of qualification. Mr. Owen also inquired as to whether OJT would result in a single set of evaluation requirements.

Emergency Response: Mr. Owen noted that operators should not place workers in environments which those workers are not trained for. At a minimum, he suggested that if such placement occurs, it be combined with a requirement of direct observation of the employee, and development of emergency plans for of each employee group (he noted that most state PUCs already require this). He also suggested that classroom training was an important component of such a plan.

Treatment of Training: Mr. Owen believes that training “is the only answer,” in combination with OJT training. He maintains that employees should be held to the same level of training as contractors are.

Mr. Owen also addressed the direction and observation of non-qualified people. He is not clear how this aspect of the rule would affect workers, but noted that certainly realistic expectations should be maintained. He suggested that this aspect of the rule focus on the

type of work that the crews are actually doing, so that "span of control" can be better determined. Mr. Owen also commented that it is too much responsibility, in terms of span of control, to expect supervision of others and conducting a job on one's own; supervisors should have supervisory responsibilities only. For example, it is too much burden for a foreman to ensure that work by others will meet pre-set standards.

Mr. Owen also discussed how to address the issue of persons contributing to incidents or accidents. He believes this should address the covered tasks rather than the individual in question. He also raised the question of how long, under the rule, an individual might be temporarily removed from their job; he sees this as an issue as to protecting one's own workforce. Moreover, he is concerned that this aspect of the rule will be construed in such a way that any mistake "in the field" can cost an individual his/her job.

In conclusion, he suggested:

- Contractors working for operators are often subject to more stringent requirements than are the actual employees of the operators – this is not a level playing field
- Labor organizations need to be more engaged in this OQ process
- This rule will require training to be successful
- Training will have to result in limiting incidents/accidents
- Operators have a responsibility to their employees and the public

Deb Haifleigh responded that the industry is aware and concerned about contractor's role, and has engaged the contractor community since this rule was adopted via the negotiated rulemaking process. She agreed that portability is a key issue, and that the array of consortiums might be more useful if pared down to a single cohesive organization. She also noted that at least one industry association has developed a "contractor roundtable" to address these issues.

One industry member suggested that the challenge to OPS is in defining inspection criteria that accept multiple approaches. Richard Sanders noted that this approach is acceptable under the regulations. Lastly, it was noted that operators are sometimes unresponsive to contractors' request for information; this needs to change as well.

<u>Presentation: Bernie Selig, Consultant, Hartford Steam Boiler</u>

Mr. Selig explained that HSB is a major insurance carrier for the pipeline industry, and thus has a vested interest in the OQ process. In short, Mr. Selig believes that the basis of the current OQ process needs to be clarity and consistency.

Mr. Selig provided a summary of work he is conducting – funded by GTI – regarding other industries' and regulators' approaches to achieving clarity and consistency in their OQ programs. Some of the industries studied included those regulated by the Federal Railroad Administration, the U.S. Coast Guard, the Nuclear Regulatory Commission,

OSHA, and the Office of Pipeline Safety/DOT. Mr. Selig informed the audience that this draft report will be available shortly.

Mr. Selig cautioned OPS about developing OQ protocols that might obviate those currently in place by other industries – e.g., OSHA. HSB's report used a tiered approach, and considered who really needed to be qualified. Their findings were that while all plant personnel needed to be qualified, the emphasis should really be on the control room operators. He also noted that no entity other than OPS included emergency response in their OQ plans.

Evaluation methods used to qualify people in other industries ran a range of options: written, oral exams, observation, simulators, training, etc. KSAs were generally explicitly specified. In general, requalification intervals ranged from 2 years to "as needed," but only for critical tasks might there be a stipulated minimal requalification interval. HSB also found that other industries such as those regulated by FRA, NRC and OSHA documented "near misses," while other industries did not include this requirement.

HSB also found that most other industries did also employ protocols and checklists as part of their inspection process. Regulatory effectiveness was sometimes (e.g., NRC) determined via incident analysis. There was also widespread tracking of operator error.

Mr. Selig explained that HSB had developed a matrix table that addresses each of the 25 questions for all 5 industries. Some interesting findings emerged, such as the fact that the high number of railroad deaths is primarily due to trains hitting automobiles and buses – the equivalent of "third party damage" in the pipeline community. He noted that OQ does not address third party damage, nor should it – but that the OQ rule would therefore not necessarily help these fatality rates improve. Mr. Selig expressed concern that OQ was not the most important investment needed, but rather integrity management is. To this end, Mr. Selig explained that OQ, if done properly will help decrease operator error; however, the fact is that operator error is currently responsible for only a very small portion of incidents/accidents.

Mr. Selig concludes that:

- SCADA operator training should be the most extensive training under the OQ rule
- Several other tasks should have extensive OQ requirements (tasks were not identified during this meeting)
- OQ requirements for the remaining tasks should be less stringent, requiring less training
- Currently, only NRC tracks which individual performed which tasks
- New construction and emergency response should not be included in the OQ rule; nor are either of these issues included in OQ rules for other industries
- KSAs must be demonstrated
- "Management of change" is a significant requirement
- Incidents "by cause" should be the only metric

- OPS should encourage operators do conduct structured, in depth root cause analysis (e.g., using TAPROOT) after incidents/accidents
- All stakeholders must work towards developing an OQ consensus standard (HSB volunteered to spearhead this process)

Questions to Mr. Selig:

Q: (Paul Biancardi, Duke Energy): The statute already requires accident investigation. Why ask for root cause?
A: Root cause analysis will provide a more comprehensive perspective on the management and process causes of errors leading to accidents.

Q: (Paul Wood, Cycla): Did your study locate any data to support a correlation between reevaluation intervals and performance experience?
A: No, but heavy fines were not resulting in safety improvements. Remedial action has been used more recently, but we haven't recently reviewed the data to see if this has succeeded, though anecdotally we believe it has not.

Q: (Paul Wood): When you talk of industry developing an OQ consensus standard, do you mean a standard that includes training in its appropriate role rather than simply an evaluation or qualification requirement?
A: Yes. Training is part of qualification, but we're not entire in agreement yet on how to incorporate training.

Q: (Richard Sanders, OPS): You suggest root cause analysis. The software you recommend is extremely costly, so how would small operators address this? Moreover, what would trigger root cause analysis?
A: We don't know the answer to this yet. OPS should take its own data and determine what percentage of incidents are caused by small operators v. large operators. I suspect that small operators are not a major part of the problem. OPS should be analyzing its own data more thoroughly.

Response (R. Sanders): Small operator incidents/accidents often don't meet the threshold for reportability to OPS; we need state regulators to assist in the collection of such information.

Afternoon Sessions

Mike Comstock (City of Mesa Pipeline) briefly discussed the new effort to develop a set of OQ Guidelines for small operators. The first task is to determine what small operators will be addressed.

Presentation: Daron Moore

Daron Moore provided an industry perspective. He noted that the OQ working group has met several times, and noted industry's appreciation regarding the opportunity to

contribute to the OQ protocols and supplemental guidance. He stated that ASME B31 is willing to fund and lead the effort to develop a national consensus OQ standard.

Some concerns remain for him, however. Industry, in his opinion, has offered viable solutions to OPS, but OPS still appears to be moving forward with protocols that industry considers to be outside of the scope of the rule. Mr. Moore believes that this is contrary to S. Gerard's intentions. Mr. Moore suggests that a final determination is needed of what is "outside the rule." Meanwhile, industry is protecting its legal position by filing comments in the docket to point to protocols it considers to be outside of the rule. Industry would like for OPS to leave those areas "outside the rule" out of the protocols, but still allow for further discussion of those areas. For industry, the issue of the enforceability of the guidance is of great concern. Specifically, even if NARI proves to be a compliance rather than an enforcement tool, industry is unclear of what that will imply. For example, if NARIs are used to highlight areas in the guidance portion of the protocol, this does not allow for due process or discovery. NARI could also, in industry's opinion, create a "moving target" for operators (e.g., raising the bar by saying "company x did y so you should as well."

Regarding Mr. Siegel's discussion re SCADA, tiering, etc., industry proposes a 3-pronged strategy:

- Industry will continue to work with the regulators in good faith (e.g., such as via industry's March 10 submittal)
- The pipeline industry should learn from other industries' OQ standards
- Industry will file docket comments on protocols "outside of the rule" and comments on the applicability – or lack thereof – of NARI

Comments: Paul Biancardi, Duke Energy:

Mr. Biancardi was involved in the 1998 OQ rulemaking. He is aware of some "glitches" that may exist, and that the rulemaking committee was always intended to be reconvened at some future point in time. Instead, OPS has conducted its recent working group meetings. Mr. Biancardi believes, as does much of industry, that some of the protocols might be "outside of the rule." These disputes need to be reconciled; the best means for doing so is by the development of a consensus standard (which would function as a formal amendment to the rule).

If disputes ultimately prove irreconcilable, then either (1) OPS needs a new public rulemaking or (2) litigation is likely to ensure.

Mr. Biancardi also raised concerns about how the protocols will be used. For example, will a mandate be used? If OPS states "an efficient program must do X," that is a mandate.

Mr. Biancardi also objects to the use of NARI. Instead, he believes OPS has two choices: (1) choose not to enforce against a specific action, or (2) enforce under Part 190. He

suggested that OPS instead should be sending something like a letter of inquiry, a method within the statutory authority of OPS that is being used in other industries.

Kent Denny of Duke Energy stated that industry provide detailed comments on the protocols via their 3/10 filing, and explained in detail their suggestions and concerns. Industry is awaiting a response from OPS to these filings; in response, Paul Wood indicated that the filings are currently under review. In the absence of OPS feedback, industry will assume that their amendments are acceptable. However, industry would like to establish a more detailed dialogue with OPS regarding the details of the protocols as well. Mr. Wood suggested instead that a quick review of industry's suggestions might be in order.

Review of Industry's Suggestions re Definitions

It was generally agreed that industry and OPS needed further discussion on the following definitions: benchmark, direct observation, emergency response, evaluator, excavation/damage prevention, KSA, and maintenance vs. new construction.

Benchmark: Industry suggested changing benchmark to "noteworthy practice." Paul Wood indicated that a benchmark is a description of a way of doing something – e.g., an operator identifying those things possibly contributing to incidents/accidents. A "noteworthy practice" might be more extensive and therefore might cost more than achieving a "benchmark." Benchmarking is more of an "acceptable approach." *Agreement*: benchmark definition as defined by OPS will remain for now, and "noteworthy practices" will be worked into the upcoming consensus standard.

Maintenance vs. New Construction: The issue at hand is really whether major repair is maintenance or new construction. *Industry Position*: if an operator works on a pipeline without removing it from the system, it is maintenance. If the pipeline has to be replaced, it is new construction. However, further discussion is needed on this topic.

KSAs: Industry and OPS agreed that, between now and the end of June, they would define what KSA is applicable to each covered task.

Excavation/Damage Prevention: This issue was tabled for now.

Meeting Wrap-up

An additional Public Meeting to be held in Atlanta was set for 4/23 and deadlines for various agreed upon products was discussed.

Discussion of Consensus Standard Development

Mr. Selig explained the consensus standard development process. He indicated that this standard, when developed, would probably be numbered in the B.31 series/Piping (probably B.31.12). He indicated that the group will be run on consensus rather an

unanimity. He expects the committee to be fairly distributed among stakeholders and to include about 25-30 participants.

Maintenance: Industry submitted a proposed definition re maintenance. Paul Wood indicated that OPS is working to come to a “functional” definition to use during inspections, but also acknowledged that the consensus rulemaking might come to a somewhat different conclusion. Richard Sanders reminded the meeting participants that some issues are already defined by OPS, and are not subject to change.